Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: HollisWealth Advisory Services Inc.

Heard: November 24, 2015, in Toronto, Ontario
Reasons for Decision: December 8, 2015.

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Greg Juby	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Charles Toth	)	For the Mutual Fund Dealers Association of Canada
David Di Paolo	)	For the Respondent

Introduction

1. The Mutual Fund Dealers Association of Canada ("the MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of HollisWealth Advisory Services Inc. (the "Respondent").

2. The Respondent entered into a Settlement Agreement with MFDA Staff in which it agreed to a proposed settlement of matters.

3. On November 24, 2015, after hearing submissions from counsel, we approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

Agreed Facts

The Respondent

4. The Respondent was formerly Dundee Private Investors Inc. ("Dundee"). Dundee was acquired by the Respondent's parent company on February 1, 2011. References to the Respondent in these Reasons include Dundee prior to November 1, 2013 and HollisWealth Advisory Services Inc. on or after November 1, 2013.

5. At all material times, the Respondent was a Member of the MFDA. Its head office is located in Toronto, Ontario.

Overview of Misconduct

6. Between September 14, 2005 and June 2013, the Respondent failed to establish and maintain a system of controls and supervision which was adequate to ensure that clients were qualified to purchase investment funds offered pursuant to prospectus exemptions (the "Exempt Funds"), contrary to MFDA Rule 2.2.1 and MFDA Policy No. 2.

7. During the relevant period, the Respondent's advisors sold Exempt Funds to approximately 1,014 separately identified clients[1] of the Respondent, including 219 separately identified clients where the account information did not support the clients' qualification for a prospectus exemption (the "Affected Clients"). Approximately 76 of the 219 Affected Clients experienced net losses (including unrealized losses) totaling approximately $744,300 in respect of the purchase of the Exempt Funds.

Details surrounding the Sale of Exempt Funds by the Respondent

8. The Exempt Funds consist of (a) investment funds previously managed by GCIC Ltd. and now managed by an affiliate of the Respondent (the "Dynamic Exempt Market Funds") and (b) investment funds managed by unaffiliated third party fund managers ("Third Party Funds").

9. During the Review Period, none of the Exempt Funds were qualified by a prospectus and, therefore, the Exempt Funds were only permitted to be distributed pursuant to prospectus exemptions.

10. During the Review Period, Exempt Funds were sold to approximately 1,014 separately identified clients of the Respondent. These funds were sold to clients primarily pursuant to five prospectus exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions*:

a. Section 2.3 (Accredited Investor);
b. Section 2.9 (Offering Memorandum) (except Ontario);
c. Section 2.10 (Minimum Amount Investment);
d. Section 2.19 (Additional Investment in Investment Fund); and
e. Section 2.24 (Employee, Executive Officer, Director and Consultant).

[1] Individual clients are assigned identification markers. A single client may have multiple markers, each of which is associated with one or more accounts. The term "separately identified clients" is synonymous with client identification markers.

Internal Review of Client Documentation Deficiencies

11. In mid to late 2012, instances of lack of documentation to support clients' qualifications to purchase certain Dynamic Exempt Market Funds were identified. That led to a comprehensive internal review for the Review Period of the sale of both the Dynamic Exempt Market Funds and Third Party Funds (the "Review").

12. Due to its comprehensive scope and complexity, the Review took over a year to complete. During that time and thereafter, the Respondent devoted substantial internal resources to its completion and to implementing changes to its policies, procedures and internal controls. In addition, the Respondent retained external legal and forensic accounting advisors to assist in conducting the Review and designing and implementing its Remediation Plan (described below).

13. The Review found that:

a. certain Exempt Funds (the "Identified Funds") were sold by advisors to approximately 219 separately identified clients where (i) the account information did not support the clients' qualifications for a prospectus exemption; and (ii) such clients had already sold the Identified Fund(s) and experienced a realized loss/gain or such clients continued to hold the Identified Fund(s) in their accounts (the "Affected Clients");
b. Affected Clients experienced approximately $1.74 million in net gains (including unrealized gains) in respect of purchases of the Identified Funds and approximately $744,300 in net losses (including unrealized losses) in respect of purchases of the Identified Funds;
c. approximately 76 of the Affected Clients were in a net loss position;
d. 21 advisors across Canada sold Identified Funds to Affected Clients that resulted in net losses;
e. approximately 73% of the net losses experienced by Affected Clients were less than $25,000; and

f. approximately 94% of the purchases of the Identified Funds that led to the net losses took place prior to the purchase of Dundee.

Failure to Supervise

14. Dundee's advisors had frontline responsibility for ensuring that clients qualified to purchase Exempt Funds. Dundee had policies, procedures and advisor training programs relating to the sale of Exempt Funds during the Review Period. However, Dundee failed to establish and maintain a system of controls and supervision which was adequate:

a. to reasonably ensure that its advisors were following and discharging their responsibilities under the policies and procedures;
b. to reasonably ensure that its Branch Managers were adequately implementing and enforcing the policies and procedures; and
c. to detect in a timely manner that the Identified Funds were being sold to clients where the account information in client files did not support the clients' qualifications for a prospectus exemption.

Mitigating Factors

(i) Proactive and Exceptional Cooperation

15. The Respondent self-identified the lack of adequate documentation to support the qualifications of certain clients to purchase the Exempt Funds. Having done so, it self-reported the issue to the MFDA in December 2013 and conducted the Review while providing the MFDA with regular progress updates. The Respondent promptly shared the detailed findings of the Review with the MFDA and otherwise fully cooperated with the regulatory investigation.

(ii) Remedial Steps

16. It was the Respondent's own compliance program that identified instances of lack of adequate documentation relating to the purchase of Dynamic Exempt Market Funds. This

prompted the Respondent to initiate its Review, which was expanded to include all Exempt Funds sold during the Review Period.

17. The Respondent has implemented a number of enhanced compliance procedures and policies and training modules in relation to the documentation and sale of Exempt Funds. In June 2013, it introduced a new mandatory Prospectus Exemption Certificate ("PEC") to be completed and signed by clients, advisors and branch managers and forwarded to Head Office Compliance in connection with each purchase of a product sold pursuant to a prospectus exemption. The Respondent also enhanced its automated compliance system to flag all purchases of Exempt Funds which Compliance matched to PECs on file. More recently, the Respondent further enhanced its automated compliance system to automatically permit the qualification of clients for prospectus exempt transactions based on account information in client files and produce exceptions for review.

(iii) Remediation Plan

18. The Respondent voluntarily developed and is implementing a remediation plan which is based on client transaction information contained in its books and records (the "Remediation Plan"). The Respondent has been paying Affected Clients who have suffered a net realized loss an amount equal to that realized loss, plus interest from the date of realization of the loss. The Respondent has also encouraged Affected Clients who continue to hold the Identified Funds in accounts with the Respondent to redeem their holdings and receive payment for any net realized losses.

19. The Respondent has communicated to Affected Clients the details of the compensation to be provided under the Remediation Plan.

20. The Respondent will ensure that the account documentation for any Affected Client who wants to retain an Identified Fund is up-to-date and that a client suitability assessment is conducted.

(iv) Internal Discipline

21. The Respondent will require all advisors who sold the Exempt Funds to clients where the account information did not support the clients' qualifications for a prospectus exemption (the "Affected Advisors") to complete an internal educational course acceptable to Staff. The Respondent will also be imposing internal fines on all Affected Advisors ranging from $2,500 to $5,000 totalling approximately $55,000. These funds will be donated by the Respondent to charity. The Respondent will also require Affected Advisors with Affected Clients who experienced a loss to reimburse it, in percentage amounts ranging from 20% to 30%, for remediation payments made to clients.

22. On August 1, 2015, the Respondent halted the sale of exempt market products. In the event that the Respondent lifts this prohibition, none of the Affected Advisors will be permitted to sell exempt products until they successfully complete the IFSE Exempt Market Products Course. As well, all current Branch Managers who supervised the Affected Advisors at the relevant time will be required to re-write the Conduct and Practices Handbook Course. Lastly, all current Branch Managers have already completed or will be required to complete the IFSE Exempt Market Products Course. They have also been trained or will be trained on new system alerts and accredited investor supervision processes and requirements.

Analysis

23. The Respondent admits that, between September 14, 2005 and June 2013, it failed to establish and maintain a system of controls and supervision which was adequate to ensure that clients were qualified to purchase investment funds offered pursuant to prospectus exemptions, contrary to MFDA Rule 2.2.1 and MFDA Policy No. 2.

24. The Respondent agreed to the following terms of settlement:

a. the Respondent shall pay a fine of $200,000 pursuant to s. 24.1.2(b) of MFDA By-law No. 1;

b. the Respondent will report on the execution of the Remediation Plan to the MFDA's Senior Vice-President, Member Regulation – Enforcement by no later than January 30, 2016, and thereafter as required by the Senior Vice-President, Member Regulation – Enforcement to ensure the Remediation Plan is completed satisfactorily;
c. the internal fines imposed, as described above, will be donated by the Respondent to charity;
d. Staff and the Respondent agree that no costs be paid by the Respondent to the MFDA in connection with this Settlement Agreement; and
e. a senior officer of the Member will attend in person, on the date set for the Settlement Hearing. (This term was complied with already.)

25. As is reflected in our jurisprudence, a hearing panel should not interfere lightly in a negotiated settlement. More specifically, it should not reject a Settlement Agreement unless it views the proposed disposition as clearly falling outside the range of reasonableness. In our view, the Settlement Agreement is not contrary to the public interest, and falls within the range of reasonable outcomes available to us in the circumstances.

26. The misconduct here involved a failure to comply with suitability obligations over a lengthy period of time. A large number of clients were affected. Many of them suffered losses. These factors make this an extremely serious matter. Indeed, these factors would ordinarily mean that general and specific deterrence and more generally, protection of the public could not adequately be served by the imposition of a $200,000 fine, particularly given the size of the Respondent company.

27. However, there are quite a few mitigating circumstances that present themselves here. The Respondent has no prior disciplinary history. It discovered the misconduct itself, and self-reported to the MFDA. It fully cooperated with the MFDA thereafter. It took comprehensive voluntary steps to ensure that clients were informed about and fully compensated for any losses, and to prevent a reoccurrence. The latter involves remedial steps by the Respondent to correct its compliance processes, including the completion of educational requirements relating to exempt market products and the imposition of internal fines on advisors who improperly sold the Exempt

Funds. The Respondent will not benefit from the internal fines imposed. These will be paid to charity. Finally, the Settlement Agreement is consistent with a settlement between IIROC and Scotia Capital which was accepted by an IIROC Hearing Panel on August 11, 2015. Scotia Capital (the IIROC Member) and the Respondent are related entities. The Scotia Capital settlement dealt with the same type of misconduct. The IIROC Hearing Panel's order was similar to the order proposed here, although the fine was somewhat larger, having regard to the fact that greater sales of the Exempt Funds occurred in the IIROC context than here.

28. In our view, the Settlement Agreement falls within the range of reasonable outcomes available in the circumstances, and serves, amongst other things, to deter those in the industry, while giving full recognition to the significant mitigating factors that exist.

Order

29. For these reasons, the Settlement Agreement was approved.

30. We are grateful to the parties for their assistance, most particularly their hard work in putting forward a joint position that is in the public interest.

DATED this 8th day of December, 2015.

"Mark J. Sandler"

Mark J. Sandler
Chair

"Greg Juby"

Greg Juby
Industry Representative

"Kenneth P. Mann"

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Industry Representative

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